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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/787,923	06/25/2001	Alain Sanson	205399USOXP	8658
22850	7590	07/14/2004	EXAMINER	
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			SNEDDEN, SHERIDAN	
			ART UNIT	PAPER NUMBER
			1653	

DATE MAILED: 07/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/787,923	SANSON ET AL.	
	Examiner	Art Unit	
	Sheridan K Snedden	1653	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-115 is/are pending in the application.
- 4a) Of the above claim(s) 1-12, 18, 20-42, 44, 47-49, 52-68 and 71-115 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13-17, 19, 43, 45, 46, 69 and 70 is/are rejected.
- 7) ☒ Claim(s) 16 and 17 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>7/2401</u> . | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

1. Applicant's election of invention I, claims 1-20, 31, 33-36, 38, 40-47, 68-71 is acknowledged. Applicant's election of species of SEQ ID NO: 2 relevant to Group I claims 13-17, 19, 43, 45, 46, 69, and 70 is acknowledged. Claims 1-12, 18, 20-42, 44, 47-49, 52-68, 71-115 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.

For the purposes of clarification, Applicant has elected the genus of chemical structures defined by formula VII recited in claim 13 and dependent claims thereto. Applicant has further made a species election of SEQ ID NO: 2.

Applicant traverses the restriction requirement and argues that the Examiner has not applied the standard for lack of unity nor has the Examiner provided adequate reasoning for a conclusion of lack of unity. These arguments have been considered but are not persuasive. The claims are directed to peptides that possess affinity for a phospholipid. The structure of these peptides are distinct as evident by the distinct formulas used to define the different structures of each genus. The common special technical feature then is their affinity for a phospholipid, which is NOT a contribution over the prior art as demonstrated in the teachings of Cordier-ochsenbein *et al.* Applicant has failed to specifically address these teachings as they relate to the claims. Thus, the restriction for examination purposes is deemed proper and is made **FINAL**.

2. Applicant's amendment of claims 13, 16, 18, and 21 is acknowledged. Claims 13-17, 19, 43, 45, 46, 69, and 70 are under examination.

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Specification

3. The disclosure is objected to because of the following informalities: In Figure 6B, there is an error in the numbering of the sequence beginning at position 75. The Figure shows both a Gly75 and a Leu75 (interpreted as Leu80). Appropriate correction is required.

Claim Objections

4. Claims 11 is objected to because of the following informalities: Claims 16 and 17 recite nonelected subject matter withdrawn from consideration. Appropriate correction is required.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 13-17, 19, 43, 45, 46, 69, and 70 are rejected under 35 U.S.C. 102(b) as being anticipated by Kaplan *et al.* (J Biol Chem. 1988 Jun 15;263(17):8037-43). Kaplan *et al.* teach Endonexin II that is a member of the Ca^{++} -dependent phospholipid binding protein family of annexins (regarding claim 19, 43). Kaplan *et al.* cloned and produced recombinant endonexin II in *E. coli*. Endonexin II is identical to SEQ ID NO: 2 at positions 25-72, and thus comprises the structure defined by formula VII (regarding claims 13-17, 69-70). Claims 45-46 recite inherent properties of Endonexin II or SEQ ID NO: 2 as limitations, and are thus taught by Kaplan *et al.* Thus, the reference clearly anticipates the invention as recited in the claims.

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Conclusion

6. No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sheridan K Snedden whose telephone number is (571) 272-0959.

The examiner can normally be reached on Monday - Friday, 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jon Weber can be reached on (571) 272-0925. The fax phone number for regular communications to the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

SKS
July 7, 2004

SKS

Karen Cochrane Carlson PhD

KAREN COCHRANE CARLSON, PH.D
PRIMARY EXAMINER